



Mary-Ann Warmerdam
Director

Department of Pesticide Regulation



Arnold Schwarzenegger
Governor

Kern County Pesticide Regulatory Program 2007/2008 Performance Evaluation Report

**California Environmental Protection Agency
Department of Pesticide Regulation
1001 I Street
Sacramento, California 95814**

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1001 I Street • P.O. Box 4015 • Sacramento, California 95812-4015 • www.cdpr.ca.gov

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Performance Evaluation of the Kern County Agricultural Commissioner Pesticide Use Enforcement Program

This report provides a performance evaluation of the Kern County Agricultural Commissioner's (CAC's) pesticide use enforcement (PUE) program for fiscal year 2007/08. The assessment evaluates the performance of goals identified in the CAC's enforcement work plan as well as the program's adherence to Department of Pesticide Regulation (DPR) standards as described in the Pesticide Use Enforcement Program Standards Compendium.

I. Summary Report of Core Program Elements

Throughout the year, the following core areas of the Kern County pesticide enforcement program were evaluated: restricted materials permitting, compliance monitoring, and enforcement response. The report findings are based on field observations, oversight inspections, review of county records, and an evaluation of pesticide use and illness investigations for 2007/08.

A) Restricted Materials Permitting:

The restricted materials permitting program element met DPR standards and work plan goals.

B) Compliance Monitoring:

The compliance monitoring program element met DPR standards and work plan goals.

C) Enforcement Response:

The enforcement response program element met DPR standards and work plan goals.

Summary Statement:

No deficiencies have been identified in the Kern County Agricultural Commissioner's pesticide use program and the program is currently effective.

II. Assessment of Core Program Effectiveness and Work Plan Goals

A) Restricted Materials Permitting:

Permit Issuance

Kern County staff who issue restricted materials permits are experienced biologists and are knowledgeable of pesticide laws and regulations. Seven of the eight pesticide use enforcement staff possesses certificates/licenses in Pesticide Regulation and Investigation and Environmental Monitoring. Biologists range from six months to over 20 years of experience in pesticide enforcement activities. Even though all pesticide enforcement staff are qualified to issue restricted materials permits, the most experienced biologists review the permits before they are issued to ensure they are accurate and complete.

Oral interviews are conducted with the restricted materials permit applicant to determine if they are the operators of the property. If the applicant possesses a private applicator certificate or a qualified applicator license, the certificate numbers are listed on the restricted materials permits.

If they are not operators of the property, letters of authorization are required to be in possession of the permit applicant prior to the issuance of the permit.

Kern County uses the Restricted Materials Management System (RMMS) to issue permits in addition to integrating a geographic information system (GIS), mapping all permit sites and sensitive sites. When the permit is amended, the change is made and it becomes part of the permit file. Changes are entered into the RMMS program by the issuing biologist.

Prior to approving the use of a restricted material on a permit, the Kern CAC compares the pesticide to the commodity to ensure pesticide is registered for use by using DPR's pesticide label database. The biologist issuing the restricted materials permit also will review any permit condition that may apply to the pesticide on the permit and condition the permit. Digital maps are used to identify sensitive sites that include labor camps, residential areas, roadways, and schools. These maps are issued to permit applicant when they apply for their pesticide permits.

The Kern CAC issued approximately 1,921 restricted materials permits and operator IDs, and four non-agricultural permits in 2007/08. CAC staff completed annual training on the policies and procedures used to issue permits and properly identify sites.

The DPR evaluation determined that permits are:

- Issued only to qualified applicants
- Signed by authorized persons
- Issued for a one year time period
- Permit amendments follow approved procedures

Site Evaluation

Notices of Intents (NOI) are received by fax machine, telephone (main office), answering machine, and a drop box located in the main office. Notices of intents are reviewed by certified pesticide enforcement staff and are compared to the electronic copy in the computer. One biologist remains in the main office each day and is responsible to review the days NOI's and issue permits. Each biologist in the field has a mobile radio and cellular telephone and is often contacted to check sites in sensitive areas when NOI's are submitted. Sensitive sites include parks, residential areas, schools, hospitals, and labor camps. Biologists have the authority to accept or deny notice of intents and contact the operator of the property and the pest control business when the notice of intent is denied.

The Kern CAC has developed strict permit conditions for the use of metam sodium. The permit conditions vary for the use of metam sodium applied through sprinklers, drip, or shank methods. The buffer zones and water sealing methods are different for the various application methods and once a certain method is denied, a second method may be allowed in making the application. All fumigant applications near sensitive sites are inspected, assuring the buffer zones are both accurate and adequate. Pre-application site inspections are conducted above the 5% for fumigant and defoliant applications around sensitive sites.

Notices of intent listing defoliant that are restricted materials to be applied near sensitive sites are evaluated and denied if the site is too close to residential areas. The application may be denied, conditioned, or be made using non-restricted pesticides. Phenoxy herbicide applications are also

evaluated when a notice of intent is submitted and are denied if near sensitive crops. Cutoff dates have been implemented that have prevented crop damage and losses from the use of several of the phenoxy herbicides, including 2,4-D, MCPA, and Dicamba. When NOIs are denied, the property operator and pest control business are notified and a denial form is completed and filed in the restricted materials permit file.

The commissioner's office has established a pilot project for notification of adjacent agricultural neighbors. Agricultural growers and pest control businesses can voluntarily access the system. The program is intended to protect agricultural workers. The system enables pesticide applicators to contact adjacent growers that may have agricultural workers near a proposed pesticide application and preventive measures can then be taken to avoid possible pesticide exposures.

Kern County reviewed approximately 10,165 NOIs during the year and conducted 692 pre-site application evaluations. Kern County denied 370 NOI during the same period.

The NOIs:

- Contained the necessary information
- Identified treatment areas and sensitive areas that could be adversely impacted by the permitted uses
- Identified mitigation measures and included conditions that addressed known hazards

The CAC staff adequately evaluates restricted materials permits and determined if the use of feasible alternatives was considered. The program reviews all Notice of Intents (NOI's) in a timely manner and adequately monitored agricultural and non-agricultural permits utilizing pre-application site evaluations and use monitoring inspections.

B) Compliance Monitoring:

Inspections

Staff from the Kern County Agricultural Commissioner's office has attended training sessions that addressed the following areas: chemigation, well head protection, structural pest control, conducting investigations, investigative sampling, restricted materials permit issuance, inspection procedures, and oversight inspection procedures.

Biologists conducting pesticide use inspections issue a violation notice for any criteria item marked "No" on the inspection forms. When worker safety non-compliances are found during an inspection, the biologists conduct a headquarters/employee safety inspection and any follow-up inspections required. The biologists also review the compliance history for the firm/person inspected and meets with the supervisor prior to issuing a violation notice. The supervisor is responsible for preparing the case file and notice of proposed action.

Inspections performed by the CAC were found to:

- Adequately address label, law and regulatory requirements
- Include interviews of employers and employees
- Adequately document violations
- Include appropriate follow-up inspections and procedures

Investigations

Kern County staff conducting pesticide enforcement investigations attended the pesticide episode investigation training in 2006. The biologist with most experience is assigned to investigate all of the pesticide-related illnesses while the remaining staff investigates all other episodes. Staff with less experience will often assist the more experience staff with their investigations. All incidents or complaints associated to pesticides are investigated and written reports are completed in each case. Training on investigative sampling is provided to the staff as needed.

C) Enforcement Response:

When non-compliances are found during inspections and investigations, Kern County issues notices of violation. The biologist reviews the compliance history of each respondent and utilizes the enforcement response regulations to determine if an enforcement action is warranted. The biologists are required to conduct follow-up inspections, which include a headquarters employer/employee inspection when worker safety non-compliances are found. Enforcement actions are taken when violations are found on incidents involving drift, pesticide-related illnesses, or when required by the enforcement response regulations. The Kern County supervisor in charge of the pesticide enforcement program will work with the enforcement branch liaison on implementing the enforcement response regulations which includes other enforcement options including referral of cases to DPR or the local district attorney. When enforcement actions are not taken, a decision report is written listing the violation(s) found, classification, and a compliance history for the respondent and an explanation for not taking an enforcement action.

Kern County took approximately 49 enforcement actions during 2007/08, a 35% increase from the previous year.

The CAC enforcement program was found to:

- Initiate the appropriate action when violations are identified;
- Sufficiently support compliance, enforcement and public protection actions.

The CAC levies fines in the appropriate category, adheres to statutory timeframes and follows DPR policies when imposing civil penalties.

III. Recommended Corrective Actions

No corrective actions are currently needed.

IV. Non-Core and Desirable Activities

Outreach and Training

The Kern County Agricultural Commissioner's office provided 30 training and outreach sessions for pesticide safety to workers, school employees, growers, pesticide applicators, and farm labor contractors. The CAC staff participated in CAPCA and PAPA meetings to provide outreach on laws and regulations regarding pesticide use and handling to licensed pest control businesses. The Agricultural Commissioners office is also a member of the Spray Safe group.